

## STATEMENT OF COMMISSIONER ROBERT M. MCDOWELL

*Re: Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, CS Docket No. 97-80, Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Docket No. 00-67.*

Almost fifteen years ago, Congress directed the Commission to adopt regulations to “assure” the development of a competitive retail marketplace for set-top boxes and similar devices used to access multichannel video programming. Specifically, Section 629 of the Communications Act calls for regulations designed to foster the development and sale of “navigation devices” by all sorts of suppliers – including cable operators on the condition that they not cross-subsidize the cost of their boxes with revenue derived from their multichannel video offerings or other services. The statute also bars the Commission from adopting any rules that would jeopardize the security of multichannel video services or thwart the rights of the provider to prevent theft of those service offerings.

Since 1996, the Commission has written many chapters in the long saga to implement Congress’ intent as expressed in Section 629. Our CableCARD rules represent many years of hard work, punctuated by a few years of sheer confusion, in an effort to create a competitive marketplace for cable-ready devices.

Time and experience have made clear, however, that Congress’ goal of creating a robust consumer market for set-top devices has often seemed elusive. In short, consumers who want to take advantage of retail options available today still face practical obstacles that can make third-party devices less appealing.

Nonetheless, precisely because Congress told us to, we are taking another stab at a remedy today. Perhaps this time Sisyphus will get his boulder to actually stay on top of the hill. But should it roll back into the Valley of Unattained Goals, some may want to ask Congress to consider new options.

Throughout this latest chapter, we have worked closely with interested parties such as consumer groups, the cable industry, its competitors, consumer electronics companies and many others. My hope is that today we have forged a workable compromise to the benefit of pay TV consumers. Accordingly,

- I support the new rule requiring cable operators that deploy switched digital video within their networks to ensure that subscribers can access the linear channels for which they have paid, and I am pleased that the regulation allows operators technical options for meeting that mandate.
- I also endorse the new self-installation rule, although I would have preferred a longer ramp-up period for cable operators who currently lack the back-office infrastructure to support consumers who run into problems with self-installs.
- In addition, I am pleased that the new rules provide greater pricing transparency for consumers who want to compare the costs involved with purchasing a box at retail as opposed to leasing a box from their cable operator.
- And I support establishing as a rule the approach the Commission has developed through

waivers to allow cable operators to deploy low-end, one-way HD boxes that integrate security and other functionality. Although such devices do not comply with the CableCARD requirements, their relatively low cost should help drive demand for the deployment of digital networks more quickly while placing more cost-effective navigation power into the hands of consumers. Yet because the new exemption does not extend to high-end devices that can record video or provide interactive features – in other words, the devices that are pouring over the horizon – it should not hinder the development of a more competitive retail market for navigation devices.

- Finally, I support the compromise effort to update our IP-based interface requirements for two-way leased boxes. By designing a rule that focuses on functionalities rather than specified standards, we provide some breathing room for technologists to innovate. I remain somewhat concerned about establishing a hard deadline for certain functionalities that are not yet fully developed, but I appreciate my colleagues' willingness to entertain reasonable requests for extension of that deadline if our prediction about the likely completion date for those features does not prove accurate.

I thank the staff of the Media Bureau and the Office of Strategic Planning and Policy Analysis for their tireless work on this Order.